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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER PAUL WHITE,

Defendant and Appellant.

A155652

(Solano County
Super. Ct. No. VCR227810)

Defendant Christopher Paul White appeals from an order reinstating his probation with modified conditions following a contested probation violation hearing. He contends the admission of hearsay testimony by his probation officer regarding the results of his drug tests violated his due process rights. We disagree and affirm.

Background

In September 2017, defendant was placed on probation following his no contest plea to one count of felony resisting an executive officer (Pen. Code, § 69). A condition of his probation required that he abstain from the use of illegal drugs. On October 2, 2018, defendant's probation was summarily revoked based on a supplemental probation report stating that on September 10, 2018, defendant tested positive for controlled substances.

At the contested probation violation hearing, defendant's probation officer testified that when she met with defendant on September 10, 2018, he indicated that he was "going through withdrawal symptoms" because he had not used methamphetamine for "approximately two weeks." She had him submit to a drug test that afternoon. She

explained that to drug test probationers the probation department uses the Sentry System, which she was familiar with and found to be reliable. Defendant's test results were positive for "opiates, methamphetamine, amphetamine, hydromorphone, [and] morphine." On cross-examination, the probation officer testified she received the test results through her computer. She explained that the drug testing was out-sourced to a private laboratory, Cordant Forensic Solutions, which is located in Flagstaff, Arizona. Although she had been unable to speak with the technician who analyzed defendant's sample, she had on "several" occasions spoken to analysts who regularly conduct the drug tests and was familiar with the process. It usually involves a "chain of command [and] testing the sample to ensure that there is a specific drug in the sample." The analysts have assured her that there is no possibility "that there could have been tampering with the sample" and if there were tampering "it would be documented on the drug test result." The probation officer did not know the name of the test used to analyze defendant's sample or whether the analyst followed the established policies and procedures for the laboratory when analyzing defendant's sample. The laboratory report, which was appended to the probation officer's report and submitted to the court, indicated that the tests were "performed under CAP-FUDT certification" and that the specimen was received "sealed and intact."

The court found defendant in violation for having tested positive for several prohibited controlled substances on September 10, 2018. The court reinstated defendant's probation on the previous terms with an additional 10 days in county jail. Defendant timely filed a notice of appeal.

Discussion

Defendant asserts the admission of his probation officer's testimony regarding the results of his drug tests violated his due process rights because he had no opportunity to confront and cross-examine the lab technician who performed the tests.

The revocation of probation is not part of a criminal prosecution, so a probationer is not entitled to " 'the full panoply of rights due a defendant [in a criminal prosecution].' " (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441, quoting *Morrissey v.*

Brewer (1972) 408 U.S. 471, 480.) In particular, the Sixth Amendment right to confront adverse witnesses does not apply to probation revocation hearings. (*People v. Shepherd* (2007) 151 Cal.App.4th 1193, 1199; *People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411.) Instead, a due process standard is used to determine whether hearsay evidence admitted during revocation proceedings violates a defendant's rights. (*Morrissey v. Brewer, supra*, at p. 482.) "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." (*Id.* at p. 481.) "As long as hearsay testimony bears a substantial degree of trustworthiness it may legitimately be used at a probation revocation proceeding. [Citations.] In general, the court will find hearsay evidence trustworthy when there are sufficient 'indicia of reliability.' " (*People v. Brown* (1989) 215 Cal.App.3d 452, 454.)

In determining whether hearsay evidence "bears a substantial degree of trustworthiness" so that it may be admissible at a probation revocation hearing, courts have distinguished between "testimonial" and non-testimonial hearsay. (*People v. Johnson, supra*, 121 Cal.App.4th at pp. 1411–1413.) If the hearsay evidence is testimonial in nature, good cause must be established for its admission. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1158–1159.) "The broad standard of 'good cause' is met (1) when the declarant is 'unavailable under the traditional hearsay standard [citation], (2) when the declarant, although not legally unavailable, can be brought to the hearing only through great difficulty or expense, or (3) when the declarant's presence would pose a risk of harm (including, in appropriate circumstances, mental or emotional harm) to the declarant." (*Id.* at pp. 1159–1160.) In contrast, nontestimonial hearsay is admissible if it bears adequate indicia of reliability. (*People v. Maki* (1985) 39 Cal.3d 707, 715–717; *People v. Johnson, supra*, at p. 1413 [laboratory report was "routine documentary evidence" admissible under *Maki* standard].)

Contrary to defendant's arguments, the evidence in this case satisfies both standards. First, although the laboratory report was not separately admitted into evidence, the trial court signed a verification indicating that it had "read and considered" the probation officer's report to which the laboratory report was attached. Nothing in the

record suggests that the laboratory report itself was not sufficiently reliable to satisfy due process. The report indicates that the tests were performed in accordance with the laboratory's certification. The probation officer testified that she had previously used Sentry System and Cordant Forensic Solutions for drug testing probationers and had found the results to be reliable. Additionally, defendant's admission that he had used methamphetamine within two weeks of the test further supports a finding that the results were reliable. Finally, the substantial expense involved in bringing a technician from Arizona to testify at every probation hearing undoubtedly establishes good cause for allowing the test results to be introduced through a combination of the probation officer's testimony and documentary evidence. Given that the laboratory report was before the court, the probation officer's testimony merely buttressed the reliability of the documentary evidence.

Disposition

The order is affirmed.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.
BROWN, J.